

H Scotland, Landholders of

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[By the Committee appointed by the General Meeting of Delegates
from the Landholders in Scotland, 1792.]

HEADS OF A BILL



ALTERING AND AMENDING THE LAWS

WITH RESPECT TO THE

QUALIFICATIONS of FREEHOLDERS in that
part of Great Britain called SCOTLAND.

WHEREAS, by the ancient constitution of Scotland, and particularly by an act of Parliament of his Majesty King James I. of Scotland, in 1425, all persons holding lands from the Crown, of whatsoever extent of value, were bound to attend the Parliament in person: *And whereas*, by an act of Parliament of King James VI. of Scotland, in 1587, the qualification for electing or being elected a Member of Parliament was declared to be confined to persons holding 40 s. lands or upwards, in free tenantry of the King: *And whereas*, By an act of the Parliament of King Charles II. in 1681, it was enacted, ' That none shall have vote in the election of Commissioners for shires or stewartries, which have been in use to be represented in Parliament and Conventions, but those who at that time shall be publicly infeft in property or superiority, and in possession of a 40 s. land of old extent, holden of the King or Prince, distinct from the feu-duties in feu-lands, or, where the said old extent appears not, shall be infeft, in lands liable in public burden for his Majesty's supplies for 40 l. of valued rent, whether kirk-lands now holden of the King, or other lands holding feu, ward, or blench of his Majesty, as King or Prince of Scotland; and that apprisers or adjudgers shall

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have

' have no vote in the said elections during the legal reversion; and
 ' that, after the expiring thereof, the appriser or adjudger first inest,
 ' shall only have vote, and no other appriser or adjudger, coming in
 ' *pari passu* till their shares be divided, that the extent or valuation
 ' thereof may appear, and that during the legal, the heritor having
 ' right to the reversion, shall have vote; and likewise proper wadset-
 ' ters, having lands of the holding, extent, or valuation foresaid:
 ' Which rights to vote, proceeding upon expired comprising, ad-
 ' judication, or proper wadset, shall not be questionable, upon
 ' pretence of any order of redemption, payment, and satisfaction,
 ' unless a decret of declarator or voluntar redemption, renunciation,
 ' or resignation be produced, and that appeirand heirs being in posses-
 ' sion by virtue of their predecessors inestment, of the holding, ex-
 ' tent, and valuation foresaid, and likewise liferenters and husbands for
 ' the freeholds of their wives, or having right to a liferent by the
 ' courtesie, if the said liferenters claim their vote, otherwise the fiar
 ' shall have vote: ' *And whereas*, from the changes that since the date
 of the above acts have taken place in the feudal holdings, in that
 part of Great Britain called Scotland, the rights of superiority which
 even, at the latest of these periods, were attended with very consi-
 derable patrimonial profit and advantage to the superior, who, though
 divested of the property and possession of the lands, had generally the
 most substantial interest therein, have become of much less importance
 and value than formerly; and whereas wadsets, as a mode of securing
 money lent upon the security of lands, and liferents whether of pro-
 perty or superiority, except in cases where persons settling their estate
 on their heirs, do reserve the superiority for their lives, are no longer
 in use, whereby several of the rights which, by the act 1681, were de-
 clared to afford a freehold qualification, have either gone totally into
 disuse, or have ceased to be attended with any patrimonial interest or
 benefit from the lands. *And whereas*, sundry persons, desirous of
 creating to themselves an undue influence, in the election of Members
 to serve in Parliament for the counties of that part of Great Britain
 called Scotland, by the means of creating nominal and fictitious qua-
 lifications, have, from time to time, separated the superiority of their
 lands from the property thereof, and conveyed the superiorities, so
 separated, in liferent or wadset to confidential friends and dependants,
 for the purpose of enabling them to vote for Members of Parliament,
 according

according to the pleasure of said persons, by whom such right of freehold was created, to the great loss and prejudice of the real proprietors, and of those having a substantial interest in the property of lands, to whom the right of election did, by the original law and constitution of Scotland, belong, while a great part of the landed property in Scotland, held by the vassals of subjects superiors, is not represented in Parliament. *And whereas*, sundry acts of Parliament, made in the reigns of their Majesties Queen Ann, King George I. and King George II. for remedying these abuses, have proved totally ineffectual; and must, from the nature of the thing, be inefficacious so long as the right of voting continues annexed to the unsubstantial right of superiority. *And whereas*, the act of 1681, in so far as, in default of proof of lands being a 40 s. land or upwards of old extent, it required that they should be valued in the cess-books at 400 l. Scots, in order to intitle persons holding such lands of the Crown to vote for a member of Parliament, was a deviation from the former constitution and law of Scotland, in as much as the medium valuation of a 40 s. land of old extent, at the date of said act of Parliament, was not 400 l. Scots, whereby the number of persons, intitled to vote for a member of Parliament was unconstitutionally diminished, and an undue advantage given to such persons as had accidentally preserved retours of their lands prior to 1681, who, in virtue thereof, had a right to vote for a Member of Parliament on lands greatly inferior in value to those, in consequence of which other proprietors, from not being in possession of the same evidence of the old extent, did not enjoy a freehold qualification. *And whereas*, it is impossible to remedy those evils which have so often called for the attention of the legislature, and to put the right of electing a Member of Parliament for the stewartries and counties in Scotland on a fair and equal footing, except by confining the right of voting to persons having the solid and substantial interest in the lands, and reducing the qualification, where it is to depend upon the valued rent, to such an amount of valued rent, as, at a medium, corresponds to a 40 s. land of old extent.

1. For remedying whereof, *Be it Enacted*, That from and after the day of no person shall be intitled to be elected, or to vote for, a Member of Parliament, for any county or stewartry in Scotland, who shall not be possessor of the property, as well as of the
superiority

superiority, of the lands on which he claims right to vote, except in the cases after-mentioned.

2. *And be it further Enacted*, That every person, who shall be publicly infeft, and in possession of the property and superiority, in virtue of an absolute and irredeemable right, and his sasine registered, or charter of conformation expedited, where conformation is necessary, for twelve months or more, of a 40 s. land of old extent, by a retour, bearing date prior to 16th September 1681, holding of the King or Prince, or lands liable in payment of public burdens, corresponding to 100 l. Scots of valued rent, holding as aforesaid; Or apparent heirs who are in possession of lands in virtue of their predecessor's infeftment, of the holding and extent or valuation aforesaid; Or husbands for their wives who are infeft and in possession of lands of the holding and extent or valuation aforesaid, or who shall possess such lands in virtue of the courtesy of Scotland; Or proprietors who are infeft and in possession of lands, of the holding and extent or valuation aforesaid, who have conveyed their estates to their heirs at law, reserving their liferents; And all liferenters now standing on the roll, who are possessed of the property and superiority of the lands on which they are inrolled; And all superiors of lands, who stand publicly infeft in a 40 s. land of old extent, or in lands liable in payment of public burdens, corresponding to 100 l. Scots of valued rent, holding as aforesaid, from whom the proprietor shall not have purchased the said superiority, in manner after-mentioned; And also, all such persons, who annually receive payment of a feu-duty of 50 l. Sterling, or bolls of victual annually, or of as much money and victual as, taken together, reckoning the victual at 15 s. per boll, shall amount to 50 l. Sterling, and their heirs and successors, standing so infeft, and in possession of such feu-duty, although they shall have been divested of the superiority of the lands, from which such feu-duty is payable, by purchase by the proprietor, in manner after-directed, shall be entitled to be inrolled a freeholder in the roll of freeholders, in the shire or stewartry, in that part of Great Britain called Scotland, wherein the said lands ly, and to vote for, or be elected, a Commissioner to serve in Parliament for Scotland; and that no person, other than those above described, shall have any right to elect or be elected a Member of Parliament, any law or practice to the contrary notwithstanding.

3. *Declaring always*, That no person shall be deemed to be in possession, in the meaning of this act, unless it shall be *bona fide*, and absolute ; and unless he holds the property in his natural possession, or draws the rents thereof from a tenant, not being the former proprietor of the said lands, or any person holding the same, as tenant, in trust for him, or for any person for his behoof, or for behoof of any person nominated for him (where the qualification is attached to property and superiority) or the feu-duties, (where the qualification arises from them) and applies the rents, produce, and profits thereof to his own proper use and benefit.

4. *But declaring*, That the fiars of lands, liferented in manner fore-said, shall not be entitled to vote at any meeting of freeholders, whether for an election of a Commissioner to serve in Parliament or otherwise, except in the absence of the liferenter.

5. And for more effectually carrying the object of this Bill into execution, by uniting together, and consolidating, so far as may be, the superiority and property of all lands within that part of Great Britain called Scotland, the superiority and property of which are at present disjoined, and stand vested in different individuals, or bodies corporate, *Be it Enacted*, That every proprietor of land, holding of a subject, shall, at any time from and after the date of the passing this Act, be entitled to hold his lands immediately of the Crown, and to compel his superior or superiors to sell and dispoise his right of superiority to him ; but under the reservation after-mentioned, and upon receiving therefor the considerations following, viz. If the lands shall be a 40 s. land, or valued in the cess-books at 100 l. and upwards, but under 200 l. the sum of 100 l. Sterling ; if valued at 200 l. but under 300 l. or if consisting of two 40 s. lands, separately retoured, the sum of 133 l. 6 s. 8 d. Sterling ; if valued at 300 l. and upwards, but under 400 l. or consisting of three 40 s. lands, separately retoured, the sum of 166 l. 13 s. 4 d. Sterling ; and if valued at 400 l. and under 500 l. or consisting of four 40 s. lands, separately retoured, the sum of 200 l. Sterling ; and for every additional 40 s. land, separately retoured, and every additional 100 l. of valuation, the sum of 10 l. Sterling, and so proportionally ; but reserving to the superiors their feu-duties and casualties of superiority, to be holden by them, in the same manner

as they are holden at present, and for payment of the same feu and other duties and casualties, as they have hitherto been obliged to pay.

6. *And it is hereby Expressly Provided and Declared*, That so long as the said superiority shall not be purchased by the proprietor, in manner before-mentioned, the former superior shall be entitled to vote for, or be elected, a Member of Parliament for the county or stewartry in which the said lands lie, provided the lands, of which he thus retains the superiority, shall be a 40s. land of old extent, or valued in the cess-books at 100l. Scots: But that nothing in this Act shall extend to, or be construed to extend to give a right to vote, or be elected, to any person or persons who, since the 2d day of July 1792, may have acquired, or hereafter shall acquire, a right to the superiority of lands of which another person is proprietor; unless, in virtue of the said right of superiority, he shall be entitled to feu-duties amounting to 50 l. Sterling or upwards, or bolls of or upwards, or as much money and victual as, taken together, reckoning the victual at 15 s. *per* boll, shall amount to 50 l.

8. *Provided also*, That nothing in this act shall extend, or be construed to extend, to give a right of voting, or of being elected, to any person or persons, who, since the said 2d day of July 1792, may have feued, or who shall feu out his lands, or may have acquired, or shall hereafter acquire, by succession, donation, purchase, or otherwise, any right of superiority, where the right of superiority has been separated from the property posterior to the said 2d day of July 1792, although, in virtue of the said right of superiority, he shall be entitled to feu-duties amounting to 50 l. Sterling or upwards, or bolls of or upwards; or as much money and victual as, taken together, reckoning the victual at 15 s. *per* boll, shall amount to 50 l.

9. *Provided also*, That nothing in this act shall extend, or be construed to extend, to allow any person or persons a right of voting for, or being elected, a Member of Parliament, in virtue of a right of superiority acquired at any time, whether before or after the said 2d day of July 1792, where the said superiority has been separated from the property by virtue of a trust feu-right; and in case such superior shall have

have paid any price for such right of superiority, he shall be entitled to recover the same from the granter of the right, upon reconveying to him the said right of superiority; and it shall also be competent to the person by whom the right of superiority was conveyed, upon returning him the money paid at the sale, to demand a reconveyance of the said superiority.

10. *And it is hereby Enacted and Declared*, That no superior shall be bound and obliged to convey a superiority to his vassal, in manner above directed, till he shall have received from such vassal the sums above provided. And if it shall so happen that such purchase shall be made from superiors who possess their estates under settlements of entail, such superiors shall not be bound or obliged to vest the sums so to be paid for the mere right of a crown-holding, in land, or otherwise bestow it for behoof of the heirs of entail, but shall be at liberty to use and employ the same as their own absolute property.

11. *And it is further Provided and Declared*, That where such subject-superior shall refuse or delay to convey such right of superiority to the said proprietor, after the foresaid price shall have been tendered to him under form of instrument, in presence of a notary and witnesses, it shall be in the power of such proprietor to bring an action before the Court of Session, for having it declared that the said right of superiority, to the extent, and in the manner before enacted, belongs to him; and, upon consignation of the price appointed by this act to be paid for the same in the hands of

the Court shall not only declare the superiority to belong to the proprietor of the land, but decern the superior to pay full costs of suit; and when the same is paid, the superior shall be entitled to receive the price consigned, and not sooner; and upon producing the said conveyance from the superior, or the said decret of declarator, to the Barons of the Court of Exchequer in Scotland, they shall authorise a charter to be passed, in the usual form, in favour of the said proprietor, for holding the said lands immediately of the Crown or Prince, in free blench, and without demanding any composition either for the entry of an heir or singular successor, and that such charter shall pass by the Great Seal *per saltum*, without passing any other

other feal; but always with and under the burden of paying to the proprietor's former immediate superior the same feu-duties and casualties of superiority as he was obliged formerly to pay to him; the amount of which duties, and nature of which casualties, shall be particularly specified in the reddendo of the said charter.

12. *And it is hereby specially Provided and Declared*, That the former superior, though denuded of the superiority by one or more purchases, in manner above mentioned, in favour of the proprietor or proprietors of the lands, shall nevertheless continue to hold the said feu-duties of the Crown, as the Crown's vassals therein, and shall be bound and obliged to pay the same blench or feu-duties, and other casualties, to the Crown, as before he was denuded of the superiority.

13. *And it is hereby further enacted and Declared*, That where there are one or more superiors interjected between the vassal who possesses the property, and the vassal who holds immediately from the Crown, the vassal who holds the property, and shall come to hold of the Crown by taking the benefit of this act, shall remain bound to pay the feu-duties, and other casualties of superiority due to the immediate superior from whom he held, and thereby ceases to hold; And that before he, his heirs, successors, or assignees, shall be intitled to any entry from the Crown in the lands, he shall produce a discharge from his said former superior of the whole bygone feu-duties, and also for the casualties that would have been due to the former superior had he remained vassal, and been to take an entry from him; and it shall only be allowable for the vassal proprietor to hold the lands of the Crown, and for the former Crown vassal to hold the reserved feu, and other duties and casualties of the Crown, in manner above mentioned; and the rights and interests of the intermediate superiors shall remain to them as at present; and the person who was the immediate superior of him who, in manner above mentioned, shall have become the vassal of the Crown, and shall hold the lands of his Majesty, or the Prince of Scotland, shall be intitled to receive his feu, and other duties and casualties, out of the said lands, in the same way and manner as he could have done while the lands were held of him.

14. *But declaring*, That if such quondam superior shall refuse, on payment of the bygone feu-duties and casualities being offered, to grant such discharge, then it shall be sufficient for the said proprietor to cite him before the said Court of Exchequer, upon a proper writ, which the said Court is hereby authorised and required to issue, there, and in presence of the Barons of the said Court, to settle and receive his bygone feu-duties, and casualities of superiority; and failing his appearance, the same shall be settled and ascertained by the said Barons; and the amount being consigned, the said charter shall be directed to be passed, in the same manner as if a discharge of the feu-duties and casualities had been produced, in manner fore-said.

15. *Declaring always*, That, if the said superior shall not appear in Court, to settle as aforesaid, he shall be liable for the full expence of the settlement; but if he shall appear and settle, then the expence of such settlement shall be defrayed by the party through whose fault the discharge was not obtained, previous to the application to the Exchequer; and which expences the Barons are hereby authorised to award, and also to inflict a penalty, if they shall see cause, not exceeding 20 l. Sterling.

16. *And whereas* it is also necessary, for the more effectually carrying the purposes of this act into execution, that all persons who have been inrolled on the roll of freeholders of any shire or stewartry in Scotland, and stand thereon in virtue of a title different from the legal qualification hereby enacted, shall be turned off the roll, and a mode prescribed for doing so; *Be it therefore Enacted*, That it shall be lawful for any freeholder standing upon the roll of freeholders, or for any freeholder whose claim to stand thereon has been unduly rejected, of any shire or stewartry in Scotland, to object to the title of any person standing upon the roll of such shire or stewartry, in virtue of titles declared by this act to be illegal or insufficient, and shall lodge his objections two kalendar months previous to the next Michaelmas meeting which shall happen immediately subsequent to the passing this act, or to present the same at any meeting for election in the said shire or stewartry that shall

shall happen within 12 months from the date of passing this act; and at such meetings the freeholders shall take such objections, and answers thereto, under consideration, and if they shall see cause, shall order the person objected against, to be expunged from the roll. And in case the freeholders shall either continue such person upon the roll, contrary to the enactments of this statute, or shall turn off the roll any freeholder entitled to stand upon it, the person so struck off, or any freeholder standing upon the roll, may apply by summary complaint to the Court of Session, who shall grant warrant for summoning such persons, and shall proceed and determine in such complaints, in manner directed by former statutes in similar cases.

17. *And be it further Enacted*, That before admitting any person to the roll of freeholders, he shall, if present, or if absent when admitted to the roll, at the first meeting of freeholders he attends, and before he can act as a freeholder, take and subscribe the following oath, which the preses or clerk to the meeting is hereby required and empowered to administer to him: ‘ I swear by God, and as
 ‘ I shall answer to God at the great day of judgment, that the lands,
 ‘ superiority, or feu-duty (as the case may be), on which I claim
 ‘ a right to vote for a member of Parliament, are a true and real
 ‘ estate in my person, for my own use and behoof, and not in trust
 ‘ for, or for the use and behoof of any person whatever: That I
 ‘ have neither granted any obligation, written or verbal, nor am
 ‘ under any obligation, direct or implied, either in law, in con-
 ‘ science, or honour, to reconvey, at any time, the said estate to the
 ‘ person from whom I derived it, or to any person or persons what-
 ‘ soever; nor to allow myself to be denuded of the same by any
 ‘ action at law, legal diligence, or other shift or device, for the pur-
 ‘ pose either of restoring the said estate to the person from whom I
 ‘ derived the same, or to any other person whatsoever; nor have I
 ‘ done any thing, directly or indirectly, to enable any person or
 ‘ persons to deprive me of the profits of the said estate. And I
 ‘ do farther swear, that I am not under any promise or obliga-
 ‘ tion, direct or implied, in conscience or honour, in consequence
 ‘ of having acquired the said estate, or as an implied condition of
 ‘ my having received the same, to give my vote for a Member of
 ‘ Parliament according to the desire or wish of the person or per-
 ‘ sons from whom I derived the said estate, or of any other person
 ‘ whatsoever; but that I not only am, but feel myself as free in
 ‘ conscience

‘ conscience and honour to give my vote according to my free choice, although it should be contrary to the political interest of the person from whom I derived the said estate, or of any other person whatsoever, as if I had purchased the same at a public or judicial sale, or had succeeded thereto from the remotest ancestor.’ And which oath shall, upon the request of any freeholder standing, or having right to stand, upon the roll, in manner foresaid, be taken by any freeholder to whom it shall be put at any meeting of freeholders, held for election or otherways, and that before he can vote for preses and clerk, or act as a freeholder at the meeting in any respect whatever; and which oath shall be put to him by the person entitled to act as preses, before choosing the preses and clerk.

18. *And be it Enacted*, That if any freeholder standing upon the roll, as afore said, shall refuse to take and subscribe this Oath, or leave the meeting after it has been proposed that the same shall be put, and does not immediately return, and take and subscribe the Oath, he shall not be allowed to vote upon any question that shall be before the meeting; and his name shall be forthwith erased from the roll: And if any Claimant shall refuse to take such Oath, he shall not be admitted to the roll. And in case any person shall presume wilfully or falsely to swear and subscribe the said Oath, and shall be thereof lawfully convicted, he shall incur the pains and punishment of perjury, and may be prosecuted for the same at the instance of any person whatever, according to the forms of the law of Scotland; and, further, shall be declared forever incapable of voting as a Freeholder, or being elected as a Member of Parliament, for any county, stewartry, or burghs, in Scotland.

19. *And be it further Enacted*, That if any person shall be chosen a Member to serve in Parliament for any county or stewartry within Scotland, without being present at the meeting of election, he shall, before taking his seat in Parliament, be obliged to take and subscribe the oath before recited, before the Lord High Steward of his Majesty’s household, or any person or persons authorised by him for that purpose, and which he or they are hereby empowered and required to administer; and, if he shall neglect or refuse to take and subscribe such oath, his election shall be void.

20. *And be it further Enacted*, That the taking and subscribing of the before recited oath, shall not be held sufficient to secure, or guard from challenge, any Qualification not supported by the enactments of this statute; but that it shall be competent to any freeholder standing upon the roll of freeholders, or whose claim has been unduly rejected, to challenge such Qualification by summary complaint before the Court of Session; and it shall be competent for the Court to allow a proof of all facts and circumstances, tending to show that the Qualification objected against is nominal, fictitious, or confidential, contrary to the enactments of this statute; and, upon such proof being brought, the Court shall fully hear and determine upon the same; and upon finding the titles of the person complained upon to be nominal, fictitious, or confidential, contrary to the true intent and meaning of this act, shall order him to be struck off the roll.

21. *And it is hereby Enacted*, That all former laws, regulating the Qualifications of Electors of Commissioners to serve in Parliament, shall remain in full force, excepting so far as they are inconsistent with this Statute.

22. *And be it further Enacted*, That this act shall be deemed, adjudged, and taken to be a public act; and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without specially pleading the same.

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N. B. In place of limiting the time for giving in complaints against undue inrolments to four months, it is proposed to allow them to be received any time within twelve months after inrolment.

